

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4900 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 - Yes 2 to 5 - No

K DEVAKY NAMBIAR

Versus

STATE OF GUJARAT

Appearance:

MR VD PARGHI for Petitioner

MR SP HASURKAR for Respondent No. 1

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 13/08/98

ORAL JUDGEMENT

The petitioner Smt. K. Devaky Nambiar, Head Clerk, in the office of the Commissioner of Fisheries, has filed this Special Civil Application under Article 226 of the Constitution of India on 26.6.1998 seeking direction to quash and set aside the order dated 1.5.1998 reverting the petitioner to the post of clerk on the ground that she had not passed the requisite Gujarati language examination. It was contended that she had passed Gujarati Higher Grade examination in the year 1997

but without considering the said fact the order of reversion has been passed as the petitioner is due to retire on 30.6.1998. This court at admission stage while issuing notice also directed the respondent No. 2 Commissioner of Fisheries to pass a fresh order after giving an opportunity to the petitioner. In pursuance of the said order a hearing was given and fresh order was passed on 30.6.1998 cancelling all her orders of promotion as follows:-

1. Office order No. MKM/2/656/223 dtd. 4.4.1975 promotion her as Senior Clerk.
2. Office order No. MKM/2/616(2)/17719 dt. 16.2.1982 promoting her as Head Clerk.
3. Office order No. MKM/1/275/18583 DT. 21.3.1984 confirming her on post of Senior Clerk.
4. Office order No. MKM/U.P.DHO/5/12420 dt. 13.1.1993 granting approval to the Higher Pay Scale.
5. Office order No. MKM/2/275/93-94/25509 dt. 22.3.1994 confirming in the cadre of Head Clerk.
6. Office order No. MKM/2/59/778 dt. 1.5.1998 of reversion.
7. Office order No. MKM/2/59/796 dt. 1.5.1998 granting promotion as Senior Clerk
8. Office order No. MKM/2/59/2212 dt. 22.6.1998 - Amendment order.

The Commissioner held that as the petitioner did not pass Gujarati language Higher Grade examination within the stipulated time frame and as such she deserves to be reverted to the lowest grade i.e. the cadre of Clerk-cum-Typist with effect from 14.4.1980. By the same order the Commissioner of Fisheries also considered the fact that the petitioner has passed the Gujarati Language Higher Grade Examination on 31.5.1997, as such directed to treat her as junior clerk during the period 14.4.1980 to 31.5.1997 and on that basis promoted her as Senior clerk with effect from 1.6.1997 and posted at the Head Office at Gandhinagar in the inter-branch, Gandhinagar. Since she was on leave, promotion was granted to resume duties for the purpose of retirement.

The petitioner came to be appointed as Clerk-cum-typist in the year 1960. She was promoted as

Senior Clerk in the year 1975 and as Head Clerk in the year 1982. She was also given a Higher Grade in the year 1991 on completion of 9, 18 and 27 years of service. As per the service condition the petitioner was required to pass Gujarati language examination. The petitioner was one of the petitioners in Special Civil Application No. 53 of 1980 before this court seeking direction for exemption from appearance at the said language examination. The said Special Civil Application was withdrawn on 31.12.1989. After disposal of the said Special Civil Application the petitioner got an opportunity to appear at the Gujarati language examination and she passed the said examination in first attempt on 30.5.1997. It is also stated that the petitioner has rendered more than 30 years of service and during her service in different capacities, she has handled the entire correspondence in Gujarati. There was no complaint against her particularly with respect to understanding and writing of Gujarati.

It is contended by Mr. Pargi, learned counsel for the petitioner that it is highly unfair to revert the petitioner at the time of her retirement particularly when throughout her entire career she has not only attended to the correspondence in Gujarati language but also passed Gujarati language examination. It is also submitted that the matter was under consideration with the Government and later on before the High Court as to whether in certain cases exemption can be given from passing Gujarati language examination. As and when the opportunity was given to her, she passed the said examination in the first attempt. He has also invited my attention to one of the Government Circulars dated 14.8.1970 which empowers the government for extending the period of passing the examination. On the other hand Mr. Hasurkar, learned counsel for the respondent, submits that the petitioner had been rightly reverted as at the time of promotions given she had not passed Gujarati language examination and therefore she was given wrong promotion one after another. He submits that the impugned order dated 30.6.1998 is well reasoned order and does not call for any interference by this court.

I have considered the rival contentions. The Governor in exercise of power under proviso of Article 309 of the Constitution has framed the Rules known as Gujarat Government Servants (Lower Standard and Higher Standard Gujarati Language Examination) Rules, 1970. Rule 5(2) provides that Government servants specified in clause (c) of Rule 4 who are appointed on or after 1st May, 1960 and who fails to pass the Lower Standard Examination in Gujarati shall, after expiry of the time

limit prescribed in the said clause, be liable to have their increments withheld till they pass the Lower Standard Examination in Gujarati in the post of first appointment or in the higher post, if promoted to it within the prescribed time limit. The proviso appended thereto empowers the State Government to extend the period of passing the examination for the reasons recorded. The proviso appended to the Rule referred to above reads as follows:-

"Provided that in any case if the State Government is satisfied that the person could not pass the Lower/Higher Standard examination within the specified period for reasons beyond his control, the State Government may, after recording reasons in writing, extend the period of passing that examination."

It is not in dispute that the petitioner has been given promotion on the higher post one after another. It is also not in dispute that the petitioner in her career of 30 years of service has attended the office correspondence in Gujarati. Thus, the respondents have acquiesced in her promotion and after having all practical purposes and accepted promotions valid, it is undesirable to invalidate the appointment after a lapse of several years. The Supreme Court in the case of NAYAGARH CO-OPERATIVE CENTRAL BANK VS. NARAYAN reported in AIR 1977 SC 112 quashed the order of reversion almost in the identical circumstances. In the case of H.C. PUTTASWAMY AND ORS. VS. CHIEF JUSTICE OF KAR. HIGH COURT reported in 1991(1) SLR 166 the apex court considered the fate of certain employees who were appointed against the provision of rules. The Supreme Court did not interfere with the appointments on the ground that on humanitarian grounds appointment of employees who were in service for the past ten years should not be quashed. Both the judgements have been relied on by the Kerala High Court in the case of RAJALEKSHMI VS. STATE OF KERALA reported in 1992(2)SLR 725. Another judgement on the same line can be referred to M.S. USMANI AND OTHERS VS. UNION OF INDIA AND OTHERS reported in (1995) 2 SCC 377.

In view of the settled position of law and the fact that the Government has power to extend time for passing the examination and in the instant case the petitioner has in fact passed the examination in the year 1997 coupled with the fact that she has served for more than 37 years and was given promotions one after another and attending the correspondence in Gujarati, in my view

the impugned order reverting the petitioner is arbitrary and unjust.

In view of the aforesaid, this Special Civil Application is allowed and the impugned orders dated 30.6.1998 and 1.5.1998 passed by respondent No. 2 reverting the petitioner down to the post of junior clerk are quashed and set aside. The petitioner shall be entitled to all consequential benefits. Rule made absolute to the aforesaid extent.

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